

## Office of the Secretary of Defense

## § 101.7

filled, following a diligent recruiting effort by the Secretary concerned.

(iv) Executed a separate written agreement incurring an obligation to participate in the Selected Reserve.

(4) *Active duty served in a combat zone.*

(i) Except as specified in paragraph (a)(4)(ii), enlisted members who (A) have served on active duty in a combat zone for hostile fire pay (or other areas as prescribed by the Secretary of Defense) for a total of 30 days or more, or (B) are wounded while on active duty in hostile areas, will not be required to perform duty involuntarily (as described paragraph (a) (1)(i)(A) and (2) of this section. However, these members may be required to participate or serve on active duty for no more than 30 days each year, unless otherwise specifically prescribed by the Secretary of Defense.

(ii) Members, who enlisted under the provisions of 10 U.S.C. 511(b) or (d) and serve on active duty described in paragraph (a)(4)(i) are obligated to participate in the Ready Reserve in an active duty training status during the statutory period of service in the Ready Reserve.

(5) *Exclusion.* Notwithstanding the exclusion of the member enlisted under the provisions of 10 U.S.C. 511(b) or (d), from the policies set forth in paragraph (a) (3) and (4) of this section, the Secretaries of the Military Departments may, with the approval of the Secretary of Defense, establish criteria which may excuse certain enlistees from performing the duty described in § 101.5(a), depending upon the particular needs of the Military Department concerned.

### § 101.6 Criteria for satisfactory performance.

Within the general policy outlined in § 101.5(a), the minimum amount of annual training prescribed by the Secretaries of the Military Departments concerned will be no less than the training required to maintain the proficiency of the unit and the skill of the individual. In establishing annual training requirements under this policy, the Secretaries:

(a) May grant exceptions under circumstances outlined below for individuals who are subject to the training re-

quirements set forth in § 101.5(a)(1) and (2):

(1) To the degree that it is consistent with military requirements, the personal circumstances of an individual may be considered in assigning him/her to a training category prescribed in 32 CFR part 102, except as otherwise provided by 32 CFR part 100.

(2) Members who have performed a minimum initial tour of extended active duty, as prescribed by the Military Departments concerned may be placed in Category I (no training) as defined in 32 CFR part 102, when the Secretary of the Military Department concerned determines that no training for mobilization requirement exists because of

(i) Changes in military skills required;

(ii) The degree of military skill held; or

(iii) Compatibility of the member's civilian occupation with his/her military skill.

(b) May grant exceptions regarding absences after considering the member's manner of performance of prescribed training duty under the provisions of § 101.5(a)(1) and provided that the absences not so excepted do not exceed 10% of scheduled drills or training periods.

(c) Shall require members to: (1) Meet the standards of satisfactory performance of training duty set forth in § 101.6(b); or (2) participate satisfactorily in an officer training program. The placement of such members in the Standby Reserve as a result of the screening process prescribed in 32 CFR part 44, will continue to constitute satisfactory performance of service.

### § 101.7 Compliance measures.

Under the provisions of 32 CFR part 100, members of the Ready Reserve who fail to meet the criteria for satisfactory performance, as set forth in § 101.6, may be:

(a) Ordered to active duty; or

(b) Ordered to active duty for training; or

(c) Transferred to, or retained in the Individual Ready Reserve with a tentative characterization of service, normally under other than honorable conditions; or

## § 101.8

(d) Discharged for unsatisfactory participation under the provisions of 32 CFR part 41, when the Military Department concerned has determined that the individual has no potential for useful service under conditions of full mobilization.

### § 101.8 Reserve training in sovereign foreign nations.

(a) The Secretaries of the Military Departments may authorize the conduct of scheduled drills or training periods, correspondence courses, and such other active or inactive duty training as they consider appropriate for members of the Reserve components who may be temporarily residing in sovereign foreign nations which permit the United States to maintain troops of the Active Forces (other than Military Advisory Assistance Group or attached personnel) within their boundaries.

(b) Prior to authorizing such training, the Secretaries of the Military Departments will instruct the attaches representing their respective Departments to inform the U.S. Ambassador and the appropriate officials of the foreign government of the intent to conduct such training. If the foreign government objects, the Secretaries of the Military Departments will furnish all the facts and their recommendations to the Secretary of Defense.

(c) This policy does not prohibit the conduct of inactive duty training, such as correspondence courses, in those sovereign foreign countries in which the United States does not maintain Active Forces and where an agreement exists between the United States and the sovereign foreign nation concerned for the conduct of such training.

(d) This policy does not prohibit for a limited duration the augmentation of Defense Attache Offices by attache reservists (mobilization augmentees or mobilization designees) during periods of local emergencies or for short-term (less than 30 days) training periods, provided the provisions of paragraph (b) of this section are respected. Attache reservists who are available, possess the expertise required, and reside temporarily in foreign countries, shall be utilized to the maximum extent to augment Defense Attache Offices be-

## 32 CFR Ch. I (7-1-10 Edition)

fore the continental United States-based attache reservists are utilized.

### PART 104—CIVILIAN EMPLOYMENT AND REEMPLOYMENT RIGHTS OF APPLICANTS FOR, AND SERVICE MEMBERS AND FORMER SERVICE MEMBERS OF THE UNIFORMED SERVICES

Sec.

104.1 Purpose.

104.2 Applicability.

104.3 Definitions.

104.4 Policy.

104.5 Responsibilities.

104.6 Procedures.

APPENDIX A TO PART 104—CIVILIAN EMPLOYMENT AND REEMPLOYMENT RIGHTS, BENEFITS AND OBLIGATIONS FOR APPLICANTS FOR, AND SERVICE MEMBERS AND FORMER SERVICE MEMBERS OF THE UNIFORMED SERVICES

APPENDIX B TO PART 104—SAMPLE EMPLOYER NOTIFICATION OF UNIFORMED SERVICE

AUTHORITY: 10 U.S.C. 1161.

SOURCE: 62 FR 3466, Jan. 23, 1998, unless otherwise noted.

#### § 104.1 Purpose.

This part:

(a) Updates implementation policy, assigns responsibilities, and prescribes procedures for informing Service members who are covered by the provisions of 38 U.S.C chapter 43 and individuals who apply for uniformed service, of their civilian employment and reemployment rights, benefits and obligations.

(b) Implements 38 U.S.C. chapter 43, which updated, codified, and strengthened the civilian employment and reemployment rights and benefits of Service members and individuals who apply for uniformed service, and specifies the obligations of Service members and applicants for uniformed service.

#### § 104.2 Applicability.

This part applies to the Office of the Secretary of Defense; the Military Departments, including the Coast Guard when it is not operating as a Military Service in the Department of the Navy by agreement with the Department of Transportation; the Chairman of the Joint Chiefs of Staff; and the Defense Agencies (referred to collectively in